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In the
Supreme Court
of the United States
October Term, 1948
No. 216

ALGOMA PLYWOOD AND VENEER CO.,

Petitioner,

WISCONSIN EMPLOYMENT RELATIONS BOARD,

Respondent.

On Certiorari to the Supreme Court
of the State of Wisconsin

**REPLY BRIEF OF ALGOMA PLYWOOD AND
VENEER CO., Petitioner**

MALCOLM K. WHYTE,
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VICTOR M. HARDING,

Counsel for Petitioner.

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FACTS

The brief of the Wisconsin Employment Relations Board in its preliminary statements emphasizes the continuing nature of the order of the Wisconsin Employment Relations

Board. This was but a portion of the Board's order. A very substantial part of the order included a directive to take affirmative action involving immediate and full reinstatement of the discharged employee and making whole such discharged employee for any loss of pay suffered by reason of the alleged discrimination. (R. 9, 10.)

ARGUMENT

A. The test of the jurisdiction of the Wisconsin Employment Relations Board and the validity of the Board's order in this case is whether or not there was a conflict with the National Labor Relations Act prior to its amendment in 1947.

Respondent rests its case principally on the ground that the Labor Management Relations Act of 1947 recognizes the jurisdiction of the State Board. The fallacy in such argument is that the order involved here was entered by the Wisconsin Employment Relations Board prior to the adoption of the Labor Management Relations Act of 1947. The jurisdiction of the State Board rests not upon that law but the National Labor Relations Act prior to its amendment in 1947.

The respondent argues, "If the issues are so limited we assume they are moot, because that Act is no longer in existence; * * *"

The assumption is unwarranted. The order of the Wisconsin Employment Relations Board which is the order here under review, directed petitioner to reinstate the discharged employee and make him whole for any loss of pay he might have suffered since the date he was discharged for failure to maintain his membership in Carpenters and Joiners of America, Local Union No. 1521. The issue of the validity of the State Board's order must certainly be tested by its

jurisdiction at the time it was entered and cannot be affected, except perhaps in respect to a *futuro* remedy, by any subsequent amendment of a statute which rendered the enabling act void. The sole question presented upon this review is whether the Wisconsin Employment Relations Board on April 30, 1947 had jurisdiction to enter the order it did against the petitioner. Counsel for the respondent attempts to change that issue to one of whether the respondent might have entered such an order several months later, after the enactment of the Labor Management Relations Act of 1947.

Respondent suggests that petitioner has argued a case which is moot. It is submitted that the case in no way became moot by subsequent amendment of the conflicting statute and in fact respondent argues an academic proposition as if the events in the record had taken place some months thereafter.

The question argued by respondent, we understand, is now on petition to this court for a writ of certiorari in the case of *International Union v. Riley* (1948) . . . N. H. . . . 59 A. (2d) 476. But the circumstances of that case are entirely different for the reason that the events there took place after the enactment and applicability of the Labor Management Relations Act of 1947.

It is significant that respondent in its brief does not rely upon the position of the Wisconsin Supreme Court in sustaining the jurisdiction of the state board in this case, but substantially on a new theory not heretofore suggested.

As has been pointed out the respondent argues this case as though it involved solely a continuing order in the nature of an injunction, but we have shown by references to the record that much more than merely that point is involved. The rights of parties to a contract under then existing law is the basic substantive problem here and this court has held

that in that situation, at least, subsequent repeal of a statute has no effect upon pending litigation involving circumstances arising under the previous statute.

Pacific M. S. S. Co. v. Joliffe, 2 Wall 450, 17 L. ed. 805 (1865).

Ellor v. City of Tacoma, 228 U. S. 148 (1913).

Accordingly the question here must be resolved by a determination of whether or not there was such conflict between the state act and the National Labor Relations Act, prior to the amendments of 1947, as would supersede the state act and therefore deny the jurisdiction of the state board.

Some effort was made by respondent to suggest that the Circuit Court review of the state board's order was what gave the board's order legal effect and that this decision was made after the Labor Management Relations Act of 1947 was enacted. But the whole scheme of Chapter 111 of the Wisconsin Statutes vests powers to enter final orders in the state board therein designated. The statute provides at Section 111.07(4):

... * * * Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committed, suspend his rights, immunities, privileges or remedies granted or afforded by this subchapter for not more than one year, and require him to take such affirmative action, including reinstatement of employees with or without pay, as the board may deem proper."

It is true that the statute makes provision for enforcement of the order by the courts but by virtue of the specific delegation of such powers as indicated to the board itself, it can hardly be doubted that they had legal effect when entered by the board on April 30, 1947.

That Congress did not intend the 1947 amendments to apply to existing contracts under the original act was demonstrated by Section 102 of the Labor Management Relations Act of 1947 which provides:

"Section 102. No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this Act which did not constitute an unfair labor practice prior thereto, and the provisions of Section 8(a)(3) . . . of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective bargaining agreement entered into prior to the date of enactment of this Act . . . if the performance of such obligation would not have constituted an unfair labor practice under Section 8(3) of the National Labor Relations Act prior to the effective date of this title."

B. The reservation of state jurisdiction cannot arise by implication unless there is some necessary inference of intention by Congress to save state laws.

The exclusive character of the jurisdiction of the federal government in this case is founded upon the United States Constitution. Article I, Section 8 confers upon Congress the power "To regulate commerce with foreign nations, and among the several states." Article VI, Clause 2 makes that power supreme, providing:

"This constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

1. The entry into the field by the National Government excludes the states, unless saved specifically or by necessary implication.

When Congress enters a particular field committed to it by the constitution, state action is automatically superseded unless it is saved by some specific provision therefor or by necessary inference.

Napier v. Atlantic Coastline R. R. Co., 272 U. S. 605 (1926).

Northern Pacific R. R. Co. v. State of Washington, 222 U. S. 370 (1912).

Second Employer's Liability Case, 223 U. S. 1 (1912).

Eric R. R. Co. v. New York, 233 U. S. 671 (1914).

Pennsylvania R. R. Co. v. Public Service Comm. of Pa., 250 U. S. 566 (1919).

Oregon-Washington R. R. and Navigation Co. v. State of Washington, 270 U. S. 566 (1919).

Cloverleaf Butler Co. v. Patterson, 315 U. S. 148 (1912).

First Iowa Hydro-Electric Co-operative v. Federal Power Commission, 328 U. S. 152 (1946).

II. The doctrine of concurrent jurisdiction is inapplicable.

The Wisconsin court and respondent have misunderstood the meaning of concurrent jurisdiction. Chief Justice Marshall in a very early case denied the existence of it in the sense in which it is applied by the Wisconsin Court by saying that if National and State Acts come into collision on interstate commerce, whether the state law was passed by virtue of concurrent power to regulate commerce among the several states or in virtue of power to regulate domestic trade and policy, the state act must yield if it deprives a citizen of the right to which the national act entitles him.

Gibbons v. Ogden, 9 Wheat. 1 (1824).

The doctrine of concurrent jurisdiction permits state action in a field which the federal government might occupy only until the latter actually enters the field.

Southern R. R. Co. v. Reid, 222 U. S. 424 (1912).

The state court here maintained, as New York State did in the Bethlehem Steel Co. Case, that the national act has no effect except when the National Board has instituted proceedings; but it is the Act, not the Board which creates the obligations which employers are required to accept. The Act would be ineffective if it applied only when the Board has entered an order in a specific case. And the Court clearly refused to recognize that principle in the Bethlehem Case.

III. A state law may not supplement a National Act regulating commerce.

A state may no more supplement the requirements of a national act than it can annul them in the absence of some specific saving clause or necessary inference that the state should have such power, when Congress has exercised its exclusive power over interstate commerce.

Eric R. R. Co. v. New York, 233 U. S. 671 (1914). (State may not limit hours of work of railroad employees to less than that allowed by federal law.)

Pennsylvania R. R. Co. v. Public Service Commission of Pa., 250 U. S. 566 (1919). (State may not require additional platforms on railroad cars in interstate commerce beyond those required by the regulations of ICC.)

Napier v. Atlantic Coastline R. R. Co., 272 U. S. 605 (1926). (State may not require further safety devices on interstate railroad engines such as fire box doors and cab curtains when ICC does not require it.)

Gloucester Butter Co. v. Patten, 315 U. S. 148 (1942).
(States more restrictive qualifications for butter being prepared for interstate commerce may not be enforced against federal regulation which treats that butter as wholesome.)

IV. Congress here intended to exclude the states.
(a) No specific savings clause was incorporated in the act.

There is no specific savings clause for state legislation here. Had Congress intended that state laws for the prevention of unfair labor practice be preserved it presumably would have used the time honored, tested and approved method of saying so with a simple saving clause. Failure to do so indicates an intent that state laws be superseded thereby.

First Iowa HydroElectric Co-operative v. Federal Power Commission, 328 U. S. 152 (1946).

In the following acts such saving clauses were used, for instance:

Fair Labor Standards Act of 1938.

Securities Exchange Act of 1934.

(b) Section 10(a) indicates Congressional intent, that jurisdiction over unfair labor practices was exclusively assumed.

Section 10(a) specifically says that the power to prevent unfair labor practices is exclusively vested in the National Board. No qualification was made in that term as it was, however, in some other sections of the Act. Hence, the only possible inference is that it meant exclusion of all other possible interference.

Respondent reads section 10(a) as excluding only other federal agencies. The history of the act demonstrates that

the main purpose was to meet the unsatisfactory condition created by a wide variety of independent boards and create a single paramount quasi-judicial authority. No state boards then existed. It seems unlikely that in its zeal to exclude jurisdiction of other agencies (there were then about 12 to 15 federal agencies) it meant to single out just the federal agencies and open the door to much greater variety and conflict by permitting 48 states to establish additional independent agencies. In fact, the Congressional Report points out that a *uniform national policy* was intended and that it should receive uniform interpretation everywhere.

S. Rep. 573, 74th Cong., 1st Sess., pp. 4-5.

"While this bill of course does not intend to go beyond the constitutional power of Congress, as that power may be worked out by the courts, it seeks the full limit of that power in preventing these unfair labor practices." (Senator Walsh in Report of Committee on Education and Labor.)

The National Labor Relations Act is a national act intended to solve national problems. A state board with no power to investigate national labor problems will likely follow local points of view. Uniform application to a company operating in many states will stabilize its labor relations, while variations due to different state rules tend to have disruptive effects on its labor relations. This is of interest to the National Board but of no interest to a state board. Thus a conflict in aims and results arises because of variant purposes.

National Labor Relations Board v. Hearst Publications, Inc., 322 U. S. 111 (1944).

This court said in *Polish National Alliance v. National Labor Relations Board*, 322 U. S. 643 referring to the National Labor Relations Act:

"By that Act, Congress in order to protect interstate commerce from adverse effects of labor disputes has undertaken to regulate all conduct having such consequences that constitutionally it can regulate."

The question of protection under the National Labor Relations Act must not be dependent upon the accident of the location of an employee within one state or another. The history of the National Labor Relations Act demonstrates that Congress did not intend a patchwork plan for securing freedom of employees' organizations in their collective bargaining. The application of the Federal Act was not intended to depend on state law. The act was not to be administered in accordance with different standards the respective states might see fit to adopt.

National Labor Relations Board v. Hearst Publications, Inc., 322 U. S. 111 (1944).

Respondent has urged that section 10(a) relates to procedural matters only. The language of the section, however, is "jurisdiction," and hence clearly excludes intervention by state agencies. The decision in *Allen Bradley Local 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740 (1942) was based upon the fact that the unfair practice there claimed involved a field not regulated by Congress; it was in fact not one of those practices listed in section 8."

C. The Wisconsin Court and Respondent urge reliance upon legislative reports as aids in interpretation of an act they contend is clear.

It is well accepted that unless there is such ambiguity as will not admit of reasonable interpretation the courts may not resort to legislative history for the purpose of construing a statute. Respondent in substance admits that there is no ambiguity except such as is raised by petitioner's claimed construction. Thus each party agrees that the mean-

ing of the act is clear; hence, there should be no need to resort to legislative history.

When one looks at the legislative history of the act, ambiguity certainly is introduced. We think it is a new and unwarranted principle to ask a court to refer to conflicting statements in legislative history for the purpose of interpreting a clear statute.

We think that there is some doubt that reference to legislative history is ever justified or helpful. The English courts have consistently refused to consider legislative history whether the statute was ambiguous or not, agreeing with Mr. Justice Holmes, who said, "We do not inquire what the legislature meant, we ask only what the statute means."

Barbui v. Allen, 7 Exch. 609 (1852).

Attorney General v. Sillem, 2 Hurlst N. C. 431 (1863).

Re York, 23 Q. B. 1 (1841).

Ewart v. Williams, 3 Drew. 21 (1854).

Arding v. Bonner, 2 Jur. N. S. (1856).

Construing a statute relating to religious education in public schools, Collins, M. R. in *Re v. West Riding of Yorkshire County* (1906), 2 K. B. 676, p. 700, said:

"Both sides sought to refer to what passed in Parliament as supporting their respective contentions as to the meaning of the enactment, but such evidence was, of course, inadmissible, and we have confined ourselves, as we were bound to do, to an attempt to collect the meaning from the language used."

In *Viscountess Rhondda's Claim* (1922) 2 AC 339 (House of Lords), in passing upon the claim of the viscountess to sit in the House of Lords, Lord Wrenbury said:

"The Attorney General tendered as evidence to be considered by the Committee an entry in the Journals of your Lordship's House of November 11, 1919, p. 432. The Attorney General did not and could not dispute that it is well settled that in construing a statute regard must be had to the language of the statute, and to that alone, assisted by a knowledge of the state of law at the day it was passed and the intent to be gathered from the statute itself if an alteration in the law. But he sought to say then an entry in the Journals did not fall within that principle. The debate upon the Bill, the fate of amendments proposed and dealt with in committee in either house, cannot be referred to to assist in construing the language of the Act as ultimately passed into law with the Royal assent."

and Viscount Birkenhead, L. C., said:

"The words of the statute are to be construed so as to ascertain the mind of the Legislature from the natural and grammatical meaning of the words which it has used, and in so construing them the existing state of the law, the mischiefs to be remedied, and the defects to be amended, may legitimately be looked at together with the general scheme of the Act."

In *Reg. v. Hertford College*, L. R. 2 Q. B. Div. 693 (1878) in construing an act of parliament, the court held that the statute was clear and that the "parliamentary history of the statute is wisely inadmissible to explain it if it is not."

At least unless there is serious doubt as to the meaning of the statute resort may not be had to constitutional or legislative debates, committee reports, journals, etc., for the purpose of interpreting it.

Anno. 70 ALR 5.

A statute should not mean what was not put into words by the legislators but only that which was actually incorporated therein. Legislation results from much deliberation and the resolution of conflicting views and should not be

interpreted to reflect extreme views in either direction but only that which is specifically said by the act itself. It has been pointed out that legislative debate is unreliable because it usually reflects tentative rather than final views, and that often misinterpretations are left unresolved lest more definite statements imperil the chance of passage. Legislative history involves many questions of policy which courts in the interpretation of statutes should ignore.

But here as in many other similar situations the greatest ambiguity surrounding the whole subject is raised by the legislative history itself. Respondent cites on page 7 of its brief an excerpt from the Conference Report of the Labor Management Relations Act of 1947 which says: "Under the house bill there was included a new section 13 of the National Labor Relations Act to assure that nothing in the Act was to be construed as authorizing any closed shop * * *". Evidently the Congress concluded that it was necessary to provide some assurance which did not exist theretofore and hence added a specific provision for that purpose. It must, therefore, be inferred that there was no assurance of such exclusion of authorization in the previous act.

The house conference report in commenting upon section 10 of the Act says:

"As under the present Act, the power of the Board under the Amended Act in the matter of unfair labor practices is exclusive. This rule has necessitated a special provision (sec. 13, hereafter discussed) to give to the states a concurrent jurisdiction in respect to closed shop and other union security arrangements. The rule of exclusive jurisdiction was developed many years ago by the Supreme Court in order to provide uniformity in matters of national policy under the commerce clause."

Respondent relies upon the decision in *Giant Foods Shopping Center, Inc.* (1948) 77 NLRB No. 153, 22 LRRM

1070 in which the board passes upon section 14(b) of the Labor Management Relation Act of 1947. Here again, however, we are dealing with a subject which is not applicable to the present case.

In the 1947 amendments to Section 10(a) the word "exclusive" in defining the National Board's jurisdiction over unfair labor practices was dropped. There was added a new provision empowering the Board to cede jurisdiction to a state agency but only where the provisions of the state statute applicable to the determination of such cases by such agency is consistent with the National Act. The committee reports hail this as some new and added concession to state jurisdiction. If this be true, it more eloquently denies the prior right of any state to so assert its policy than any other argument.

Respondent, though urging that the Labor Management Relations Act of 1947 applies, does not assert the necessary qualification that the National Board ever ceded its jurisdiction in this case or any other, or in any general way. Its only reference to that point is to show that the National Board is conducting all elections on the closed shop which would indicate the contrary. Under the conflicting provisions of the Amended Act and the state act, it is inconceivable that the National Board would cede jurisdiction for it is not authorized so to do where there is such conflict.

The provisions of Section 14(b) of the amended act do not aid respondent's position even if that act were applicable. No provision of the state act prohibits the kind of contract referred to in that section. Indeed, the state act permits such contracts (including the now nationally condemned "closed shop") when a different percentage of employees vote in favor of it.

Both in the conference report and the Senate Report on

the proviso of Section 8(3) of the National Labor Relations Act as amended in 1947 it is pointed out that the act "permits" maintenance of membership.

Conference Report, House Report 510, 80th Cong. p. 41.
Senate Report 105, 80th Cong., pp. 6-7.

As the Senate Report points out, "although these regulatory measures have not received authoritative interpretation by the Supreme Court, * * * it is obvious that they pose important questions of accommodating Federal and State legislation affecting commerce (*Hill v. Florida*, 325 U. S. 538; see also *Bethlehem Steel Co. v. N. Y. Labor Board* decided by the Supreme Court April 7, 1947)."

The Senate Report under the original act said "Section 10(a) gives the National Labor Relations Board exclusive jurisdiction to prevent and redress unfair labor practices, and, taken in conjunction with Section 14, establishes clearly that this bill is paramount over other laws that might touch upon similar subject matter."

Senate Report No. 573, 74th Cong., p. 15.

Since the adoption of the 1947 amendments conferring power on the National Board to cede jurisdiction to state agencies under Section 10(a) dealing with unfair labor practices the Board's General Counsel went into the question. He reported in a speech on March 10, 1948 that,

"We have explored the possibilities of such agreements with several of the state boards, but thus far we have not concluded any agreements because there are too many instances where the state statute and the Federal statute are inconsistent.

"The answer is, therefore, that it appears to us that we are obliged to proceed in all situations where court decisions indicate that the Federal power exists, unless and until the state statute is made to conform to the Federal statute or the latter is amended."

Petitioner therefore submits that the congressional reports inject more ambiguity than is apparent in the act itself; that they are conflicting and support petitioner's claimed interpretation as much as any other or more, and that the reports under the amended act make clear that the State Board here had no jurisdiction to enter its order, even under the amended act.

Respondent's suggestion that the reports under the amended act be used to ascertain what the 74th Congress meant when it adopted the original act seems particularly unwarranted. The personnel was different and it seems that this extra judicial function assumed by the report should not under any circumstances be considered.

CONCLUSION

The validity of the order of the State Board and its jurisdiction in this case must be tested by the provisions of the National Labor Relations Act prior to its amendment in 1947. The state act was clearly invalid as in conflict with that law and hence the State Board was without jurisdiction in this case. The same result follows even though its validity were to be tested under the National Act as amended by the Labor Management Relations Act of 1947.

Respectfully submitted,

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APPENDIX

Wisconsin Statutes

Section 111.02 Definitions. When used in this subchapter: * * *

(9) The term "all-union agreement" shall mean an agreement between any employer and the representative of his employees in a collective bargaining unit whereby all or any of the employees in such unit are required to be members of a single labor organization.

Section 111.06 *What are unfair labor practices.*

(1) It shall be an unfair labor practice for an employer individually or in concert with others:

(c) 1. To encourage or discourage membership in any labor organization, employee agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment; provided, that an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employees in a collective bargaining unit, where at least two-thirds of such employees voting (provided such two-thirds of the employees also constitute at least a majority of the employees in such collective bargaining unit), shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the board. * * *

U. S. Statutes

Original National Labor Relations Act

Sec. 8.

It shall be an unfair labor practice for an employer—

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in the National Industrial Recovery Act (U.S.C., Supp. VII, title 15, sec. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made.

National Labor Relations Act as amended by Labor Management Relations Act of 1947

Sec. 8(a).

It shall be an unfair labor practice for an employer—

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9(e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization, to make such an agreement: Provided

further. That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A)-if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

Sec. 10(a)

The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise.

Sec. 10(a).

The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency, jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provisions of the State or Territorial statute applicable to

the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

Sec. 14.

Wherever the application of the provisions of section 7(a) of the National Industrial Recovery Act (U.S.C., Supp. VII, title 15, sec. 707(a)), as amended from time to time, or of section 77B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: Provided, That in any situation where the provisions of this Act can not be validly enforced, the provisions of such other Acts shall remain in full force and effect.

Sec. 14.

(a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.